

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JAMES JACKS,  
Plaintiff,

v.

CIVIL ACTION NO.  
14-13072-MBB

LUIS SPENCER, THOMAS  
DICKHAUT, JAMES SABA,  
CAROL LAWTON and DENISE  
McDONOUGH,  
Defendants.

**PROCEDURAL ORDER RE:  
DEFENDANTS' RENEWED MOTION TO DISMISS  
(DOCKET ENTRY # 33)**

**March 16, 2016**

**BOWLER, U.S.M.J**

Pending before this court is a motion to dismiss counts II and VIII filed by defendants Luis Spencer, Thomas Dickhaut, James Saba, Carol Lawton and Denise McDonough ("defendants") under Fed.R.Civ.P. 12(b)(6) ("Rule 12(b)(6)"). (Docket Entry ## 33, 34). In seeking dismissal under Rule 12(b)(6), defendants rely on two exhibits, including an affidavit, attached to the memorandum in support of the motion.

Absent a conversion of the Rule 12(b)(6) motion to a motion for summary judgment under Fed.R.Civ.P. 56 ("Rule 56"), it is improper to consider the affidavit. Accordingly, this court will convert the motion to a summary judgment motion under Rule 56 in accordance with the procedure in Rule 12(d). The parties are afforded a reasonable opportunity up to and including March 31,

2016, to file any additional evidentiary material pertinent to the motion. See Fed.R.Civ.P. 12(d). The parties may, but are not required, to file such material. The parties are also advised that on summary judgment this court will consider all of the material already filed and in the record that falls within the purview of Rule 56(c)(1)(A) material.

/s/ Marianne B. Bowler  
**MARIANNE B. BOWLER**  
United States Magistrate Judge